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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/705,464

11/12/2003

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117731

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25944 7590 11/10/2008  
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EXAMINER

CARTER, AARON W

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

11/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,464	<b>Applicant(s)</b> TOOYAMA ET AL.	
	<b>Examiner</b> AARON W. CARTER	<b>Art Unit</b> 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 18-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is responsive to papers filed on 7/24/08.

#### ***Election/Restrictions***

2. Applicant's election without traverse of Species 1 (claims 1-17) in the reply filed on 7/24/08 is acknowledged.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1 and 3 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101" – publicly available at USPTO.GOV, "memorandum to examining corp"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. In order for a process to be "tied" to another statutory

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category, the structure of another statutory category should be positively recited in a step or steps significant to the basic inventive concept, and NOT just in association with statements of intended use or purpose, insignificant pre or post solution activity, or implicitly.

5. Claims 2 and 4-16 are rejected by virtue of their dependency upon claims 1 and 3.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3 and 5-17 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,614,427 to Aubrey.

As to claim 1, Aubrey discloses a method of fabricating printed material for stereoscopic viewing, the method comprising:

Creating a first image of an object for a left eye for stereoscopic viewing (*Fig. 1 and column 3, line 21 - column 4, line 4, wherein the a pair of stereo images are taken one of which corresponds to a first image of an object for a left eye*);

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Creating a second image of an object for a right eye for stereoscopic viewing (*Fig. 1 and column 3, line 21 - column 4, line 4, wherein the a pair of stereo images are taken one of which corresponds to a second image of an object for a right eye*);

Creating a second image of the object for the left eye by performing correction processing on the first image of the object for the left eye, the correction processing removing perspective of an image at a base surface in the first image of the object for the left eye (*Fig. 2-4 and column 4, line 5 - column 5, line 20, see specifically column 4, lines 56-59, wherein the ground plane corresponds to the base surface and the deconstruction of linear perspective corresponds to the removal of perspective of an image at a base surface in the image*);

Creating a second image of the object for the right eye by performing correction processing on the first image of the object for the right eye, the correction processing removing perspective of an image at the base surface in the first image of the object for the right eye (*Fig. 2-4 and column 4, line 5 - column 5, line 20, see specifically column 4, lines 56-59, wherein the ground plane corresponds to the base surface and the deconstruction of linear perspective corresponds to the removal of perspective of an image at a base surface in the image*); and

Fabricating printed material for stereoscopic viewing based on the second image of the object for the left eye and the second image of the object for the right eye (*column 5, lines 21-57*).

As to claim 3, Aubrey discloses a method of fabricating printed material for stereoscopic viewing, the method comprising:

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Creating a first image of an object for a left eye for stereoscopic viewing by photographing a subject and first to fourth marks for the left eye, the subject and the first to fourth marks for the left eye being photographed from a viewpoint position for the left eye, the first to fourth marks for the left eye forming a rectangle on a base surface (*Fig. 1 and column 3, line 21 - column 4, line 4, wherein the a pair of stereo images are taken one of which corresponds to a first image of an object for a left eye, the four corners of the checker board correspond to first to fourth marks, the checker board forming a rectangle on a base surface*);

Creating a first image of an object for a right eye for stereoscopic viewing by photographing a subject and first to fourth marks for the right eye, the subject and the first to fourth marks for the right eye being photographed from a viewpoint position for the right eye, the first to fourth marks for the right eye forming a rectangle on a base surface (*Fig. 1 and column 3, line 21 - column 4, line 4, wherein the a pair of stereo images are taken one of which corresponds to a first image of an object for a right eye, the four corners of the checker board correspond to first to fourth marks, the checker board forming a rectangle on a base surface*);

Creating a second image of the object for the left eye from the first image of the object for the left eye, by performing correction processing which moves the first to fourth marks for the left eye in the first image of the object for the left eye to positions of vertices of a rectangle (*Fig. 2-4 and column 4, line 5 - column 5, line 20, see specifically column 4, lines 56-59, wherein the ground plane/checker board corresponds to the base surface and the deconstruction of linear perspective corresponds to the removal of perspective of an image at a base surface in the image, which involves the moving of the four corners of the ground plane/checker board*);

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Creating a second image of the object for the right eye from the first image of the object for the right eye, by performing correction processing which moves the first to fourth marks for the right eye in the first image of the object for the right eye to positions of vertices of a rectangle (*Fig. 2-4 and column 4, line 5 - column 5, line 20, see specifically column 4, lines 56-59, wherein the ground plane/checker board corresponds to the base surface and the deconstruction of linear perspective corresponds to the removal of perspective of an image at a base surface in the image, which involves the moving of the four corners of the ground plane/checker board*);

Fabricating printed material for stereoscopic viewing based on the second image of the object for the left eye and the second image of the object for the right eye (*column 5, lines 21-57*).

As to claim 5, Aubrey discloses the method of fabricating printed material for stereoscopic viewing as defined in claim 1, further comprising:

Creating the first image of the object for the left eye by photographing a subject from a viewpoint position for the left eye (*column 3, lines 21-67*);

Creating the first image of the object for the right eye by photographing the subject from a viewpoint position for the right eye (*column 3, lines 21-67*); and

When a distance between the subject and a viewpoint position has been extended, extending a distance between the viewpoint position for the left eye and the viewpoint position for the right eye in accordance with the change in length of the distance between the subject and the viewpoint position (*column 5, lines 21-57, wherein the distance from the viewpoint position and the subject is adjusted equally for both left and right eye*).

As to claim 6, please refer to the rejection of claim 5 above.

As to claim 7, Aubrey discloses the method of fabricating printed material for stereoscopic viewing as defined in claim 1, further comprising:

Creating the first image of the object for the left eye by photographing a subject from a viewpoint position for the left eye (*column 3, lines 21-67*);

Creating the first image of the object for the right eye by photographing the subject from a viewpoint position for the right eye (*column 3, lines 21-67*); and

Moving a viewpoint position along a line having a predetermined angle with respect to the base surface, when a distance between the subject and the viewpoint position is to be changed (*column 5, lines 21-57*).

As to claim 8, please refer to the rejection of claim 7 above.

As to claim 9, Aubrey discloses the method of fabricating printed material for stereoscopic viewing as defined in claim 1,

Wherein a surface on which printed material for stereoscopic viewing is placed during stereoscopic viewing is set to be the base surface (*column 5, lines 21-57*).

As to claim 10, please refer to the rejection of claim 9 above.



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As to claim 11, Aubrey discloses the method of fabricating printed material for stereoscopic viewing as defined in claim 1, further comprising:

Fabricating printed material for stereoscopic viewing by combining the second image of the object for the left eye and the second image of the object for the right eye by anaglyph processing (*column 5, lines 21-57*).

As to claim 12, please refer to the rejection of claim 11 above.

**Regarding Claims 13-17 please refer to the MPEP 2113 with regards to product-by-process claims.**

As to claim 13, Aubrey discloses printed material for stereoscopic viewing (*column 5, lines 21-57*) fabricated by the method as defined in claim 1.

As to claim 14, please refer to the rejection of claim 13 above.

As to claim 15, Aubrey discloses printed material for stereoscopic viewing (*column 5, lines 21-57*) fabricated by copying printed materials for stereoscopic viewing fabricated by the method as defined in claim 1.

As to claim 16, please refer to the rejection of claim 15 above.

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As to claim 17, Aubrey discloses printed material for stereoscopic viewing (*column 5, lines 21-57*) which is fabricated by combining an image of a object for a left eye and an image of the object for a right eye,

Wherein each of the image of the object for the left eye and the image of the object for the right eye comprises an image of an object which is disposed on a base surface, and

Wherein the image of the object in the image of the object for the left eye and the image of the object in the image of the object for the right eye match at the base surface, and an offset between the image of the object in the image of the object for the left eye and the image of the object in the image of the object for the right eye becomes larger with increasing distance from the base surface.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 14 of copending Application No. 11/892626.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims perform the same steps to create a stereoscopic image and are obvious variations of each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN 5,398,131 to Hall et al. discloses printed material for stereoscopic viewing.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON W. CARTER whose telephone number is (571)272-7445. The examiner can normally be reached on 8am - 4:30 am (Mon. - Fri.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Werner can be reached on (571) 272-7401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron W Carter/

Primary Examiner, Art Unit 2624